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REMARKS

Rejections under §103(a)

- A. Claims 1, 2, 4-11, and 13-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Publication No. 2004/0142678 A1 to Krasner in view of United States Patent 6,925,378 to Tzamaloukas

To warrant this obviousness rejection, Krasner in view of Tzamaloukas must teach each element of those claims, and there must be a motivation to combine the references. See, MPEP §2131. The Applicant respectfully traverses this rejection of the remaining claims for the reasons stated below.

The mere fact that references can be combined is not sufficient to warrant an obviousness rejection. In this case, the references themselves teach away from the combination. Krasner teaches a method and apparatus for communicating emergency information using wireless devices. Krasner's teachings relate to wireless mobile devices that incorporate wireless telecommunications and position location systems for automatically notifying emergency services in response to a vehicular event such as an accident. See, Krasner ¶3. Those of ordinary skill in the art would readily appreciate the benefits of rapid response times in light of an emergency.

In contrast, Tzamaloukas teaches an enhanced mobile communication device with extended radio, and applications. The Tzamaloukas device communicates using an ad-hoc mode of communication and an infrastructure mode of communication. See, abstract, Tzamaloukas.

Based on these two references, the Examiner erroneously alleges that it "would have been obvious" to modify the invention of Krasner by detecting wireless access point and establishing a communication gateway between the wireless access point and a service provider utilizing the vehicle telematics device and communicating data. See, page 3-4 of the March 30, 2006 office action.

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The Examiner errs for several reasons. First, any such modification would destroy the principle of operation of Krasner. Second, there is no reasonable likelihood of success based on the teachings of the prior art.

Krasner's device is for communicating *emergency information*. Those of ordinary skill in the art would find it abhorrent to suggest that the communication of emergency information be dependent on an *ad-hoc* network. The Examiner's proposed modification would result in the potential for emergency information to be not transmitted in an emergency, should an ad-hoc network not be available. Those of ordinary skill in the art are, instead, motivated to ensure that emergency communications be expedited and communicated as quickly as possible. Krasner functions by transmitting a message between an onboard wireless device and an onboard telematics device – Krasner does not rely on the wireless access point is a wireless modem unit within a secondary mobile vehicle, as claimed in claims 1, 10, and 19. Therefore, there can be no proper motivation to combine Krasner with the ad-hoc networks of Tzamaloukas.

Additionally, a proper rejection under §103(a) requires a reasonable likelihood of success. See, MPEP 2143.02. The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Here, rather than a likelihood of success, the combination of Krasner with Tzamaloukas results in a likelihood of failure. Those of ordinary skill in the art would not find a sufficiently high likelihood of success in conditioning an emergency transmission on the presence of a similarly situated device to form an ad-hoc network.

Yet further, there can be no motivation to combine in light of Krasner's failure to denounce the method and apparatus for communication emergency information using wireless devices as less than optimal and in light of Tzamaloukas' failure to pronounce the enhanced mobile communication device with extended radio, and applications as an optimal communications method and apparatus.

Withdrawal of the rejection of claims 1, 10 and 19 under 35 USC §103(a) as being unpatentable over Krasner in view of Tzamaloukas is therefore respectfully

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requested. Additionally, claims 2, 4-9, 11, 13-18 depend from one of claims 1, 10, or 19 and are therefore patentable over the prior art for at least the same reasons.

Withdrawal of the rejections of claims 2, 4-11, and 13-18 under 35 USC §103(a) as being unpatentable over Krasner in view of Tzamaloukas is therefore respectfully requested.

- B. Claims 3 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over Krasner in view of Tzamaloukas in view of United States Patent Publication 2005/0135302 to Wang.

To warrant this obviousness rejection of claims 3 and 12, Krasner and Tzamaloukas in combination must teach each limitation of those claims, in as great detail as claimed. (See MPEP §2143.) The Applicant respectfully traverses this obviousness rejection of claims 3 and 12.

Claim 3 depends from claim 1, and claim 12 depends from claim 10. Therefore, claims 3 and 12 are patentable over the combination of Krasner and Tzamaloukas in view of Wang for at least the same reasons as outlined with respect to claims 1 and 10.

Withdrawal of the rejections of claims 3 and 12 under 35 USC §103(a) as being obvious over Krasner in view of Tzamaloukas in view of Wang is therefore respectfully requested.

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SUMMARY

The Applicant respectfully submits that claims 1-19 as listed herein fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain at issue that may best be resolved through a personal or telephonic interview, Examiner Ekong is respectfully requested to contact the undersigned at the telephone number listed below.

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Respectfully submitted,



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